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**IN THE  
COURT OF APPEALS OF INDIANA**

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JOHN L. PURCELL,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 21A05-0605-PC-262
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

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APPEAL FROM THE FAYETTE CIRCUIT COURT  
The Honorable Daniel L. Pflum, Judge  
Cause No. 21C01-0301-PC-24

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**June 20, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

John L. Purcell appeals the denial of his petition for post-conviction relief. He raises three issues, which we restate as:

- I. Whether he knowingly and voluntarily entered his guilty plea.
- II. Whether he was denied effective assistance of counsel.
- III. Whether cumulative errors warrant reversal of his guilty plea and sentence.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

In 1992, Purcell and another inmate<sup>1</sup> at the Fayette County Jail seized control of the jail and took several jail employees and inmates hostage. In January of 1993, Purcell was declared competent to stand trial. In May of 1993, after ascertaining that Purcell understood the charges against him and his right to trial and that he was satisfied with his attorney's representation, the trial court determined that Purcell knowingly and voluntarily entered into a plea agreement. The court accepted his plea of guilty but mentally ill to seven counts of kidnapping, as Class A felonies. One count of being an habitual offender was dismissed. Purcell was sentenced to forty years on each of the seven counts, all to run concurrent to each other and consecutive to his sentences under cause numbers 21C01-9202-CV-19 and 70C01-8906-CF-244. Additional facts will be supplied as necessary.

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<sup>1</sup> See *Corn v. State*, 659 N.E.2d 554 (Ind. 1995); see also *Corn v. State*, No. 21A05-0304-PC-195 (Ind. Ct. App., Feb. 26, 2004).

## DISCUSSION AND DECISION

Purcell asserts that his conviction should be overturned because the plea agreement was “deceptive and created illusory promises.” *Appellant’s Br.* at 4. He contends that he did not understand what was going on at his guilty plea hearing because he was still using drugs and alcohol at the time of the hearing, that he did not understand the distinction between concurrent and consecutive sentences, and that he did not understand “guilty but mentally ill.” He argues that his trial counsel was ineffective for failing to request a further competency evaluation before proceeding with the plea agreement. Purcell asserts that his failure to raise these issues in a direct appeal was not a waiver because any error is fundamental and he was not advised of his right to appeal. Further, Purcell asks us to find that even if no specific error requires reversal, the cumulative nature of several lesser errors warrants reversal.

The petitioner in a post-conviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence. *Fisher v. State*, 810 N.E.2d 674, 679 (Ind. 2004); Ind. Post-Conviction Rule 1(5). Because the appeal from the denial of post-conviction relief is an appeal from a negative judgment, we will reverse the judgment only if the evidence as a whole unerringly and unmistakably leads to a conclusion opposite that reached by the post-conviction court. *Id.* Where, as here, the post-conviction court has entered findings of fact and conclusions thereon in accordance with Indiana Post-Conviction Rule 1(6), we will accept the findings of fact unless they are clearly erroneous, but we accord no deference to the conclusions thereon. *Id.* The post-conviction court is the sole judge of the weight of the evidence and the credibility of witnesses. *Id.*

A claim of ineffective assistance of trial counsel may be raised for the first time in a post-conviction proceeding. *Woods v. State*, 701 N.E.2d 1208, 1220 (Ind. 1998), *cert. denied*, 528 U.S. 861, 120 S. Ct. 150 (1999). To prevail on a claim of ineffective assistance of counsel, a petitioner must demonstrate both that his counsel's performance was deficient and that the petitioner was prejudiced by the deficient performance. *Ben-Yisrayl v. State*, 729 N.E.2d 102, 106 (Ind. 2000) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674 (1984), *cert. denied*, 534 U.S. 830, 122 S. Ct. 74, 151 (2001)). A counsel's performance is deficient if it falls below an objective standard of reasonableness based on prevailing professional norms. *Id.* A strong presumption arises that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Timberlake v. State*, 753 N.E.2d 591, 603 (Ind. 2001), *cert. denied*, 537 U.S. 839, 123 S. Ct. 162 (2002). Most ineffective assistance of counsel claims can be resolved by a prejudice inquiry alone. *Id.* Therefore, Purcell must demonstrate a reasonable probability that the result of the proceeding would have been different but for defense counsel's inadequate representation. *See Ben-Yisrayl*, 729 N.E.2d at 106.

At the post-conviction hearing, Purcell's trial counsel testified that Purcell had been determined to be competent to stand trial only four months before the guilty plea hearing, that Purcell had appeared capable of participating in his decision to plead guilty, that Purcell had indicated that he wanted to avoid going to trial, and that, in 1993, the trial court was not required to advise a defendant of his right to appeal either the conviction or the sentence that resulted from a guilty plea.

Our review of the guilty plea hearing shows that the trial court asked all the pertinent

questions and that Purcell answered each question appropriately. The trial court explained to Purcell that the maximum sentence was fifty years and the minimum sentence was twenty years, that the sentences on the seven charges could be consecutive or concurrent to each other but were required to be served consecutive to his sentences in other cases because he was imprisoned at the time he committed the instant offenses. Purcell testified that he had read the plea agreement and discussed it with his attorney. He answered “no” to the questions of whether he had been offered anything other than that stated in the plea agreement or threatened in anyway.

Because Purcell cannot show that his trial counsel was ineffective or that there is a reasonable likelihood that he would not have entered a guilty plea except for counsel’s ineffective representation, his challenge must fail. Any error in failing to advise Purcell of his right to appeal is rectified by our addressing the merits of such an appeal here. Finally, because we find no individual error by the trial court, Purcell’s claim of cumulative error must fail. Finding no error, we conclude that the post-conviction court did not err by concluding that Purcell failed to meet his burden of proof.

Affirmed.

DARDEN, J., and FRIEDLANDER, J., concur.